289.

SUPREME COURT OF THE UNITED STATES.

No. 263.

THE UNITED STATES, APPELLANTS,

vs.

JOHN McDONOGH.

APPEAL FROM THE DISTRICT COURT, U. S., FOR LOUISIANA.

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GIDEON, Printer.

United States district court, eastern district of Louisiana, sitting in chancery.

JOHN McDONOGH
vs.
The UNITED STATES. } No. 41.

Be it remembered, that heretofore, to wit, on the fifteenth day of June, being the May term, A. D. 1846, of the said court, John McDonogh, by his solicitor, C. Roselius, esq., came into the office of the clerk of said court and filed his petition, which is in the words and figures following, to wit:

To the honorable Theodore H. McCaleb, judge of the United States district court, in and for the district of Louisiana.

The petition of John McDonogh, residing in the parish of Orleans, State of Louisiana, respectfully represents: That, on or about the 20th January, 1804, Philip Robinson presented a petition to Don Thomas Estevan, the commandant of the district of Galveston, setting forth that he had been in the peaceable possession of a tract of land as a vacherie or stock farm, for black cattle, and cultivated the same since the year 1797, on the bayou Colyel, (now vulgarly called bayou Gotohell,) and on which he now resides with his family, having settled thereon since the aforesaid period, with the leave and permission of the preceding commandant, but that said permission has been unfortunately lost and destroyed by fire by the burning of his house; that lately the lands bounding those which your petitioner claims have been marked and measured in favor of Don Geronimo La Chiapella, and that fearing that some intruder may injure him, he therefore prays that the said commandant may be pleased to renew the order in his favor, bounding said land with said Lachiapella to the east and west; and to the north with the land of his Majesty's dominions, extending in depth from said bayou to said Lachiapella's land, and to the south with said bayou Colyel, containing about two thousand two hundred arpents, more or less, as is shewn more fully by the preceding plan; that upon the said petition the said commandant ordered that said Robinson might continue in possession of the said land, settled with the permission of the predecessor of said commandant; all of which, together with other necessary particulars, will more fully appear by reference to the annexed document marked E, No. 1, made part of this petition; and your petitioner further represents, that said grant or concession included all the land comprised within the limits of survey of Geronimo La Chiapella, and bounded by said lines on two sides, having eighteen hundred and fifty perches on one side in depth from said bayou, and one thousand and fifty perches in depth on the other side from the said bayou; that the metes and bounds of said land, its location and description, will more particularly appear by reference to said annexed plan and survey; that on or about the 12th November, 1804, the said

grantee, Philip Robinson, sold and conveyed said tract of land, according to the grant and plan of survey thereof, with its courses, distances, &c., to McDonogh & Brown, by a deed executed before the said commandant of the district of Galveston, West Florida, as will appear by reference to a copy of said deed of sale, marked E, No. 2, hereunto annexed as a part of this petition; that on the death of said Shepherd Brown, his partner in business and joint purchaser of the aforesaid tract of land, and on the settlement of said partnership and joint transactions with the heirs and legal representatives of the deceased, your petitioner became the sole and exclusive owner of said land, as will be proved in due time; that the titles of said land were duly presented to, and proved before, the board of land commissioners, who recognised and admitted the validity of said titles only to the extent of twelve hundred and eighty arpents; that he has always insisted that he was entitled to the whole tract of land comprised within the before mentioned boundaries, and has, in no manner, waived any of his rights thereto; that the whole of said tract of land, or the greater part thereof, has either been sold by the United States or confirmed to actual settlers; that he cannot and does not contest the title of those who are in possession of the said land under the sales or confirmation aforesaid; that although the title to said land was inchoate, yet it would have been completed under and in conformity to the laws, usages, and customs, of the Spanish government under which it was granted, had not the sovereignty of the country been afterwards transferred to the United States.

Wherefore your petitioner respectfully prays, that the district attorney of the United States for the district of Louisiana may be cited to appear and answer this petition; that the validity of the title of your petitioner to the whole of the before described tract of land be inquired into, and decided by the court; that, after due proceedings had, judgment be rendered in favor of your petitioner, decreeing and recognising that the title of your petitioner to the whole of said tract of land is good and valid; and that your petitioner is entitled to enter a like quantity of land as is embraced within the aforesaid limits and boundaries, according to the provisions of the act of Congress in such case made and provided, in lieu of such part thereof as may have been sold or confirmed as aforesaid; and your petitioner prays for all such other and further aid, relief, and remedy, as the nature of his case may require, and to law and equity appertain. And, as in duty bound, he will ever pray, &c.

(Signed) C. ROSELIUS,
For Petitioner.

John McDonogh being duly sworn, deposes and says, that all the facts and allegations in the foregoing petition contained are correct and true, according to the best of his knowledge and belief.

(Signed) JOHN McDONOGH.

Sworn to and subscribed before me this 15th June, 1846.

(Signed) L. E. SIMONDS, *D'y clerk.*

Document marked "E, No. 1," made part of the foregoing petition, purporting to be the original grant of the land claimed, dated 20th January, 1804, which document is as follows:

[For plat see original, page 5.]

Señor Commandante Don THOMAS ESTIVAN:

Don Felipe Robinson, habitante de este distrito á vm. representa que ha poseido pacificamente como baqueria, y ha cultivado desde de el año de 1797, una porcion de tierra sobre el bayu Gotohell, sobre el que actualmente reside con su familia, habiendose fixado alli a aquella epoca con permito del comandante predecesor de vm.; pero el memorial del exponente y dicho permiso han sido desgraciadamente perdido y destruidos por el incendio de mi casa. Que ultimamente las tierras contiguas a las que reclama el exponente han sido apeadas á favor de Don Geronimo Lachiapella, y temiendo de que algun intruso le perjudique, suplica a vm., tenga la bondad de renovar la orden á su favor, lindando la dicha tierra con dicho Lachiapella al este y œste, y al norte con tierras del dominio de S. M., extendiendose desde dicho bayu en profundidad hasta el limite de dicho Lachiapella, y al sur con el mismo bayu Gotohell, dicha porcion de tierra conteniendo como dos mil y cien arpanes, como aparece del plano que precede.

Distrito de Galveztown, el 20 de Enero, de 1804.

(Signed) PHILIP ROBINSON.

GALVESTOWN, 20 *de Enero, de* 1804.

Esta parte puede continuar en la posesion de la tierra establecida con permiso de mi antecesor, y se presentara á la intendencia general, para obtener sus titulos en forma.

(Signed) THOMAS ESTEVAN.

LOUISIANA.

Recorded in the office of the clerk to the commissioner of land claims west of Pearl river, and east of the Mississippi, in libre F, No. 1, folio 418.

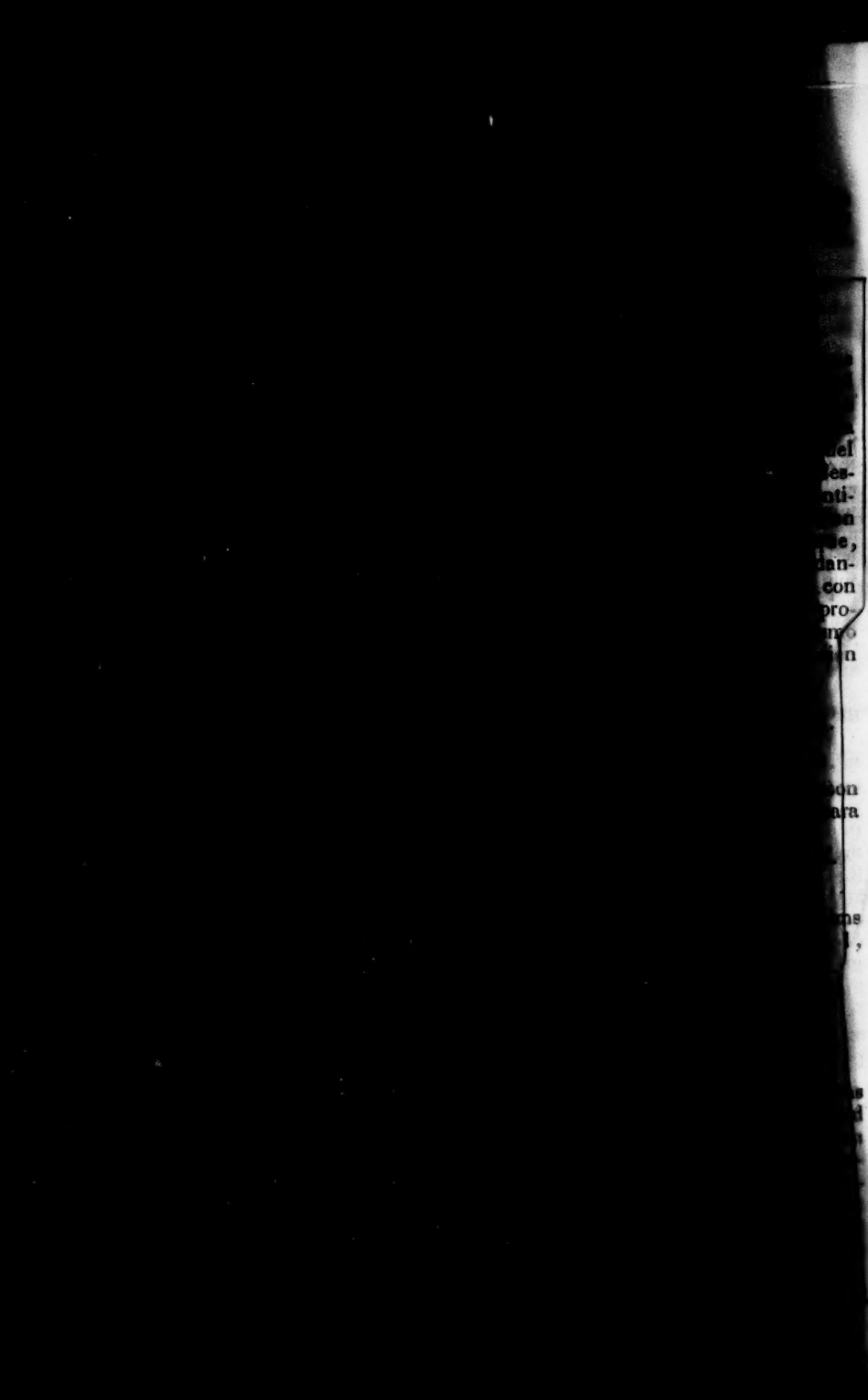
(Signed) CHARLES S. COSBY, *Clerk.*

[*Translation of document marked "E, No.* 1."]

Señor Commandant Don THOMAS ESTEVAN.

Don Felipe Robinson, of this district, represents to you that he has peacefully possessed a body of land as a vacherie, or stock farm, and cultivated the same since the year 1797; which land is on the bayou Go-to-hell, on which he now resides with his family, having settled himself there since said period, with leave of your predecessor, the commandant; but the memorial of the petitioner and said permit have been unfortunately lost and destroyed by the burning of my house; that lately the lands contiguous to those which your petitioner claims have

No 2634, W. D. to Mc Donough — Kans —



been marked and measured in favor of Don Geronimo La Chiapella, and that fearing that some intruder may injure him, he prays you will please renew the order in his favor; bounding said land by the lands of said La Chiapella on the east and west, and on the north by lands of his Majesty's domains, extending in depth from said bayou to said La Chiapella's land, and to the south with said bayou Gotohell; said body or tract of land contains about 2,100 acres, as it is shown more fully by the preceding plan.

District of Galveztown, 20th January, 1804.

(Signed) PHILIP ROBINSON.

GALVESTOWN, 20*th January*, 1804.

This party may continue in possession of the land settled, with the permission of my predecessor, and will present himself to the intendency general to obtain his proper titles.

(Signed) THOMAS ESTEVAN.

LOUISIANA.

Recorded in the office of the clerk to the commissioner of land claims, west of Pearl river and east of the Mississippi, in liber F, No. 1, folio 418. (Signed) CHAS. S. COSBY, *Clerk*.

Document marked "E, No. 2," made part of the petition, purporting to be a copy of the deed of sale by P. Robinson to McDonogh and Brown, dated 12th November, 1804; which document is as follows:

Sepan quantos esta vieren como yo, Don Felipe Rovinson, habitante de la rivera Amy, en el bayu Cotegel, que cedo y vendo á las Señores Don Juan Maldonal y Ceperdo Brun, una habitacion y todo el derecho que tengo a dicha tierra compuesta de dos mil y cien arpanes superficie, en la suma de seis cientos pesos, que por my derecho me han pagado de contado; cuia tierra linda con las de Don Geronimo Lachapela por un lado, y con tierras vacantes segun se demuestra por el plano figurativo en my memorial, cuia tierra asi vendida y cedida para los dichos compradores a quien todo lo cedo para que como suia propia la posean, gocer, cedar o benda a su favor en señal de esta escritura, que a su favor otorgo en presencia de los testigos havajo firmados.

Yo, Don Thomas Estevan, comandante de esta jurisdicion doy fé, conosco á los otorgantes que asy lo depesar y firmaron en dicho distrito a las doce dias de Noviembre, de el año de mil ocho cientos y quarto.

(Signed) PHILIP ROBINSON,
JOHN McDONOGH,
And SHEPHERD BROWN.

Testigo—P. GRO,
Otro—JUAN PAREDO.

LOUISIANA.

Recorded in the office of the clerk to the *clerk of the* commissioner of land claims, west of Pearl river and east of the Mississippi, in liber F, No. 1, folio 419, &c.

(Signed) CHARLES S. COSBY, *Clerk*.

(*Translation of the foregoing document, marked E, No.* 2.)

Know ye, all men that will see this, that I, Don Felipe Robinson, inhabitant of the river Amite, on the bayou Cotegel, that I do grant and sell to Messrs. Don Juan Maldonal and Ceperd Brown, a plantation, and all the right which I have to said land, composed of 2,100 superficial arpents, for the sum of six hundred dollars, which they have paid me in cash for my right to it: which land adjoins on one side those of Don Geronimo La Chiapella, and vacant land, as is shown in the figurative plan annexed to my petition; which land is sold and granted to said buyers, that they, as their own property, may enjoy, sell, or grant it to their advantage, in virtue of this bill of sale, which I make in their favor, in presence of the undersigned witnesses.

I, Don Thomas Estevan, commandant of this jurisdiction, do certify, that I know the parties to the above, and that they executed said instrument in the said district, the twelfth day of November, 1804.

(Signed) THOMAS ESTEVAN.
" PHILIP ROBINSON.
" JOHN McDONOGH, and
" SHEPHERD BROWN.

Witnesses, P. GRO.
Another, JUAN PAREDO.

LOUISIANA.

Recorded in the office of the clerk to *the clerk of* the commissioner of land claims, west of Pearl river and east of the Mississippi, in lib. F, No. 1, 419. (Signed) CHARLES S. COSBY, *Clk*.

And further, at the same term, to wit, on the 16th of June, 1846, the following citation was issued from the clerk's office in this case.

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon S. W. Downs, esq., United States attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district court of Louisiana, at a district court to be holden at New Orleans, on the first Monday of July, 1846, then and there to answer a petition in chancery, filed against the United States, wherein John McDonogh is petitioner.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable T. H. McCaleb, judge, this sixteenth day of June. New Orleans, 1846, and 70th year of American independence. [SEAL.]

(Signed) L. E. SIMONDS, *Dep. Clerk*.

Mem. Defendant is to enter an appearance in this cause in the clerk's office, on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Marshal's return on the foregoing citation.

Received, this 16th day of June, 1846, and on the same day served copies of the within citation, plaintiff's petition and documents annexed, on the within named S. W. Downs, esq., United States attorney, in the manner following, to wit, by leaving the same in his office, in New Orleans, in the hands of Alfred Porilliat, a white person, over 14 years of age, and employed in said office, said attorney being absent at the time.

Ret'd 17th June, 1846.

(Signed) For WM. F. WAGNER,
U. S. Marshal.
J. H. RINEHART,
D'y U. S. Marshal.

And further, at the same term, to wit, on the 5th of November, 1846, the defendants appeared and filed of record the following answer:

In the district court of the United States, for the district of Louisiana.

JOHN MCDONOGH vs. THE UNITED STATES. } No. 41.

The defendants now come, and for answer to plaintiff's petition, deny all and singular the facts and allegations therein contained.

Wherefore they pray that the said petition may be dismissed at plaintiff's costs.

(Signed) THOMAS J. DURANT, *Att'y*.

And afterwards, at the February term, to wit, on the 16th of March, 1849, the plaintiff appeared and filed of record the following replication:

District court, U. S., Louisiana district.

JOHN MCDONOGH vs. THE UNITED STATES. } No. 41.

The replication of John McDonogh, complainant, to the answer of the U. States, defendants.

This repliant, saving all benefit of exception, &c., says: That he maintains and will prove, his bill true and sufficient in law, and that

the answer of the defendants is insufficient, as this honorable court may require, and prays as he hath prayed in his bill.

(Signed) A. HENNEN &
C. ROSELIUS,
Sol'rs for compl't.

And further, at the same term and on the same day, the following entry was made of record in this case:

JOHN McDONOGH
vs. } No. 41.
THE UNITED STATES.

This cause came regularly up for hearing to-day Alfred Hennen, esq., appearing for the complainant, and U. S. attorney for the defendants; when, after evidence was adduced on the part of the former, and argument heard on both sides, the same was taken under advisement by the court.

Evidence offered by the plaintiff.

1o. Plaintiff offered in evidence document marked "E, No, 1," already copied, from page 5 to page 7, of this transcript.

2o. Plaintiff offered in evidence document marked "E, No. 2," already copied, from page 7 to page 10, of this transcript.

The two foregoing documents were admitted by the court, subject to the exceptions raised by the defendants as to their admissibility as evidence.

3o. The plaintiff offered in evidence the following deposition of Ls. Bouligny, as to the signature to document "E, No. 1;" which deposition is as follows:

U. S. district court for Louisiana.

JOHN McDONOGH
vs. } No. 41.
THE UNITED STATES.

Testimony taken in open court, Friday, March 16th, 1849, on the hearing.

Louis Bouligny, esq., on being sworn and shown a document herein marked E, No. 1, deposes, that he is well acquainted with the signature of Estevan, and believes the signature to said document (Thomas Estevan) to be his genuine signature; has seen him write and sign his name.

The district attorney being present, propounds no cross questions to the witness.

(Signed) L. BOULIGNY.
Attest: (Signed) ROBT. M. LUSHER, *D'y Clerk.*

And afterwards, at the May term, to wit, on the 26th of May, 1849, the court rendered the following opinion and decree, which were entered of record in this case:

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Opinion.

This claim is founded upon a warrant or permission to continue in possession of the land mentioned in the petition of the grantee. The land had already been held by virtue of a previous authority, which is recognised by Estevan, the commandant, by the permission in writing, introduced in evidence, and relied on by the petitioner. This instrument is dated the 20th of January, 1804, and brings the case fully within the provisions of the act of 1824. It is such an inchoate right of title to the land, as the commandant of a post could legally give, and there is no reason to doubt that it would have been perfected into a complete title by the intendency, had the country remained under the dominion of Spain.

I am, therefore, of the opinion that the title should be confirmed.

And thereupon the following decree was entered of record on the minutes:

JOHN McDONOGH vs. THE UNITED STATES. } No. 41.

Decree.

This cause came on for hearing at the present term, to wit, on the 16th day of March, 1849, on the petition, answer, replication, exhibits, and proof of record, and was argued by counsel for the complainant, and the district attorney of the United States for the defendants; and the court being duly advised in the premises, and having fully considered the case, on this day rendered its opinion and decree, as follows:

The petitioner claims the quantity of twenty-one hundred (2,100) superficial arpents of land in controversy, by virtue of a warrant or permission to continue in possession of the land granted, given on the 20th January, 1804, by Thomas Estevan, the commandant, in writing, produced in evidence and proved by Louis Bouligny, a living witness, examined at the trial.

The petitioner derives his title by regular conveyances from the original grantee, Philip Robinson, who had been in possession of the land, by an order of the Spanish Government, since 1797, and so continued until the 20th of January, 1804. The title was duly presented to the land office, as stated on the order aforesaid of the 20th of January, 1804, and was confirmed for only twelve hundred and eighty (1,280) superficial acres.

For the reasons given at length in the case of Joseph Reynes versus the United States, (No. 10 of the docket,) the court is of opinion that the petitioner, John McDonogh, has a valid claim to the tract of land claimed by him; that his claim is guaranteed by the cession of Lou-

isiana to the United States, and by the law of nations; and that he is entitled to the relief granted by the act of Congress approved the 17th day of June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers," and that to which it refers, approved May 26th, 1824.

It is therefore ordered, adjudged, and decreed, that the grant made by the Spanish Government to the said Philip Robinson, as aforesaid, is valid against the United States, and the survey thereof forming part of the grant, of record herein as part of the exhibits, containing twenty-one hundred superficial arpents, more or less, according to and with the metes and bounds as described in said survey, and to be located and surveyed conformably thereto, belongs to the petitioner, holding under the original grantee, a citizen and resident of the province of Louisiana.

And whereas it is ascertained that a great part of said tract of land is now held by titles emanating from the United States, it is further ordered, adjudged, and decreed, that for all the land within said limits so held, and which has been sold or otherwise disposed of by the U. States, the claimant shall be, and he is hereby, authorized to enter, after the same shall have been offered at public sale, the like quantity of land, in parcels conformable to sectional divisions and subdivisions, in any land office of the United States in the State of Louisiana; and if it should so happen that, in making such entries, there should remain in the hands of the enterer a fractional excess of acres of a less number than the smallest sectional divisions allowed by law to be sold, the party interested shall have the right to enter, in virtue of such fractional excess, the quantity of one-half quarter section of land, upon paying one dollar and $\frac{25}{100}$ for each acre contained in such half quarter section over and above the fractional excess to which he may be entitled by this confirmation.

Judgment rendered 26th May, 1849.

Judgment signed 30th May, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And further, at the same term, to wit, on the 30th of May, 1849, the following motion and order of appeal were entered of record in this case:

JOHN McDONOGH
vs. } 41.
THE UNITED STATES.

On motion of Logan Hunton, esq., attorney of the United States, for the eastern district of Louisiana, and of Thomas J. Durant, esq., on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court rendered against them at this term, in the matter

of No. 41, John McDonogh versus the United States, and desire to appeal therefrom.

It is thereupon ordered by the court, that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States, at the next term thereof after the date of this order.

Finis.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for said district, do hereby certify, that the foregoing sixteen folios of manuscript contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, wherein John McDonogh (claim E of 2100 arps.) is plaintiff, and the United States are defendants, No. 41 of the land docket of said court.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at the city of New Orleans, this twenty-second day of September, one thousand eight hundred and forty-nine, and the 74th year of American independence.

N. R. JENNINGS,
Clerk U. S. district court, eastern dist. of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify, that N. R. Jennings, who subscribed the above certificate, was, at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his above certificate is in due form of law.

Witness my hand and seal at New Orleans, this 24th day of September, A. D. 1849.

THEO. H. McCALEB. [SEAL.]

The United States of America, to John McDonogh, residing in the parish of Orleans, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to an order of appeal granted on the thirtieth day of May, 1849, by the district court of the United States, in and for the eastern district of Louisiana, in a certain cause in chancery, (under the acts approved May 26th, 1824, and June 17th, 1844,) entitled (No. 41.) John McDonogh vs. the United States, wherein the said United States of America are now appellants, and you are appellee, to show cause if any there be, why the judgment rendered against the appellant, as in the said order of appeal mentioned, should